

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**  
Attorneys at Law

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**CHERYL A. FALVEY**  
202.887.4318/fax: 202.887.4288  
cfalvey@akingump.com

July 25, 2007

**Via Facsimile (212) 805-0426**

Honorable Laura Taylor Swain  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

**MEMO ENDORSED**

IT IS ORDERED that counsel to whom this Memo Endorsement is sent is responsible for faxing or otherwise delivering promptly a copy to all counsel and unrepresented parties and filing a certificate of such service within 5 days from the date hereof. Do not fax such certification to Chambers.

*Re: Jernow v. Wendy's International, Inc.*  
*United States District Court for the Southern District of New York*  
*(07 Civ. 3971) (LTS) (THK)*

Dear Judge Swain:

Pursuant to the Court's order dated July 17, 2007, please accept this application for reinstatement of the motion to dismiss the amended complaint that was originally filed by my client, Wendy's International, Inc. ("Wendy's") on July 16, 2007. Pursuant to Paragraph 1.A of your Individual Practices and as further described below, Wendy's has consulted with plaintiff's counsel regarding this request for reinstatement.

In compliance with the Order of July 17, 2007 and Paragraph 2.B of your Individual Practices, the parties have exchanged letters and conducted an oral discussion of the matters in controversy in Wendy's motion to dismiss plaintiff's amended complaint. Wendy's sent plaintiff's counsel a letter on July 18, 2007 outlining Wendy's legal position and spoke with Mr. Jernow's counsel that same day. The following day, July 19, plaintiff's counsel advised that he intended to provide a written response no later than Monday, July 23. During this time, the parties also exchanged e-mails in an attempt to schedule the required teleconference. On Monday, plaintiff's counsel advised that he was unavailable until Tuesday, July 24 to discuss this matter, and no written response was received that day. On Tuesday, July 24, plaintiff's counsel provided a written response to Wendy's July 18 letter and the parties discussed the matter by telephone. Plaintiff's counsel informed counsel for Wendy's that he agrees that Wendy's has now complied with Paragraph 2.B of your Individual Practices.

Despite the parties' discussions and best efforts to resolve informally the matters raised in the motion to dismiss the amended complaint, the parties were unable to reach an agreement and consideration and disposition of the motion to dismiss remains necessary. A certification

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regarding the efforts undertaken by the parties in relation to resolve the motion to dismiss the amended complaint is attached to this letter. Pursuant to the direction provided by chambers on July 18, 2007, copies of the motion to dismiss and memorandum of law in support thereof originally filed on July 16, 2007 are not included with this letter application.

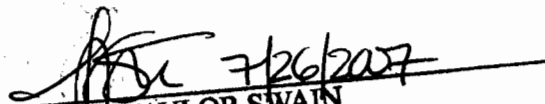
If the Court requires any additional information on this matter, we stand ready to provide it.

Sincerely,



Cheryl A. Falvey

The application is granted.

**SO ORDERED.**  
7/26/2007  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE